

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

February 19, 1999

IN RE:

**PETITION OF BLUESTAR
COMMUNICATIONS, LLC
TO TRANSFER AUTHORITY TO
BLUESTAR NETWORKS, INC.**

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**DOCKET NO.
98-00810**

ORDER GRANTING APPROVAL OF TRANSFER OF AUTHORITY

This matter is before the Tennessee Regulatory Authority ("Authority") on the Petition of BlueStar Communications, LLC ("BlueStar" or the "Petitioner") for approval of a transfer of a Certificate of Public Convenience and Necessity ("CCN") pursuant to Tenn. Code Ann. § 65-4-113. The Directors of the Authority considered this matter at a regularly scheduled Authority Conference on December 15, 1998.

From the application and the record existing in this matter, the Authority has determined the following:

1. BlueStar is a limited liability company duly organized and existing under the laws of the State of Tennessee. BlueStar holds authority to operate as a competing telecommunications service provider in Tennessee as reflected in the Certificate of Public Convenience and Necessity granted by the Authority in Docket No. 98-00569.

2. The Petitioner is restructuring from a limited liability company into a holding company and two wholly-owned subsidiaries, one of which is called BlueStar Networks, Inc.

("BlueStar Networks"). The purpose of this reorganization is to change BlueStar's operations from a limited liability company into a corporation and to separate the company's telecommunications operations from its non-telecommunications services. As a result of this restructuring, BlueStar Networks, the telecommunications subsidiary, will assume all the financial, managerial, and technical capabilities of BlueStar. It will be managed by the same personnel and will have the same network operations and financial support as BlueStar.

I. CRITERIA FOR APPROVING TRANSFER

A transfer of authority to provide utility services cannot occur until the regulated public utility first obtains approval of such transfer by the Authority. The Directors of the Authority must approve the transfer pursuant to the requirements set forth under Tenn. Code Ann. § 65-4-

113. This Section, in pertinent part, provides for the following:

(a) **No public utility, as defined in § 65-4-101, shall transfer all or any part of its authority to provide utility services, derived from its certificate of public convenience and necessity issued by the authority, to any individual, partnership, corporation or other entity without first obtaining the approval of the authority.**

(b) Upon petition for approval of the transfer of authority to provide utility services, the authority shall take into consideration all relevant factors, including, but not limited to, the suitability, the financial responsibility, and capability of the proposed transferee to perform efficiently the utility services to be transferred and the benefit to the consuming public to be gained from the transfer. The authority shall approve the transfer after consideration of all relevant factors and upon finding that such transfer furthers the public interest.

(c) **Following approval of the transfer pursuant to this section, the transferee shall be granted full authority to provide the transferred services subject to the continuing regulation of the authority. The transferor shall no longer have any authority to provide the transferred services, but shall retain authority to provide other services, if any are retained, which were not included in such transfer. (Emphasis supplied).**

Additionally, Tenn. Code Ann. § 65-5-212 requires a competing telecommunications service provider to file a small and minority-owned telecommunications business participation plan (“SMBP”) with its application for a certificate.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

After consideration of the entire record in this matter, including the Petition, the Directors find and conclude as follows:

1. That the Authority has jurisdiction over the subject matter of said Petition pursuant to Tenn. Code Ann. § 65-4-113;
2. That the transfer will be accomplished by an internal restructuring of BlueStar, which permits BlueStar Networks to provide service as a competing local exchange service provider;
3. That BlueStar Networks will rely upon the same personnel and resources for technical, managerial and financial ability as BlueStar to provide the transferred services. In addition, BlueStar Networks has adopted the SMBP of BlueStar, and is authorized to conduct business in Tennessee by the Secretary of State;
4. That since BlueStar Networks has access to the above-mentioned resources, BlueStar Networks is fit to provide the services that had been provided by BlueStar;
5. That the change is transparent to customers since it is an internal restructuring for management purposes;
6. That based upon the foregoing, the transfer of the Petitioner’s CCN to BlueStar Networks is compatible with the public interest.

IT IS THEREFORE ORDERED THAT:

1. The transfer of the Certificate of Public Convenience and Necessity of BlueStar Communications, LLC to BlueStar Networks, Inc. is approved;
2. BlueStar Networks, Inc. is authorized to provide competing local exchange telecommunications services;
3. BlueStar Communications, LLC is no longer permitted to provide competitive local exchange telecommunications services in Tennessee.
4. Any party aggrieved by the Authority's decision in this matter may file a Petition for Reconsideration with the Authority within ten (10) days from and after the date of this Order.



CHAIRMAN



DIRECTOR



DIRECTOR

ATTEST:



EXECUTIVE SECRETARY